

# TURNER PADGET

TURNER PADGET GRAHAM & LANEY P.A.

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REPLY TO:

**Thomas C. Salane**

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October 21, 2008

Public Service Commission  
Attn: Docketing Department  
Post Office Drawer 11649  
Columbia, S.C. 29201

Re: In Re: Office of Regulatory Staff v. Daniel Saporita d/b/a Limoscene  
Docket No. 1998-164-T

Dear Sirs:

Enclosed for filing please find the Original and one (1) copy of the Response to Petition on behalf of Respondent Daniel Saporita d/b/a Limoscene in connection with the above referenced matter.

By copy of this letter, we are serving a copy of the enclosed Response to Petition upon the undersigned attorneys for the Office of Regulatory Staff.

Sincerely,

TURNER, PADGET, GRAHAM & LANEY, P.A.



Thomas C. Salane

TCS:ts

cc: Jeffrey M. Nelson, Esquire  
Shealy Boland Reibold, Esquire

Cola 968248v1

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**BEFORE**  
**THE PUBLIC SERVICE COMMISSION OF**  
**SOUTH CAROLINA**

DOCKET NO. 1998-164-T

IN THE MATTER OF:

|                                  |   |
|----------------------------------|---|
| Office of Regulatory Staff,      | ) |
|                                  | ) |
| Petitioner,                      | ) |
|                                  | ) |
| vs.                              | ) |
|                                  | ) |
| Daniel Saporita d/b/a Limoscene, | ) |
|                                  | ) |
| Respondent.                      | ) |
| _____                            | ) |

**RESPONSE TO PETITION**

Respondent Daniel Saporita d/b/a Limoscene (hereinafter "Limoscene"), responding to the Petition herein, would respectfully allege:

**FOR A FIRST RESPONSE**

1. Each and every allegation of the Petition is denied unless hereinafter expressly and specifically admitted.

2. Paragraph 1 of the Petition is admitted to the extent it alleges (a) the Public Service Commission (hereinafter "PSC") is a state regulatory agency charged with regulation of motor vehicle carriers operating for compensation; and (b) the Office of Regulatory Staff (hereinafter "ORS") is a state agency charged with the representation of the "public interest" as defined in *S.C. Code Ann.* §58-4-10 in matters before the PSC.

3. Paragraph 2 of the Petition is admitted.

4. Paragraph 3 of the Petition is admitted.

5. Answering Paragraph 4 of the Petition, Respondent Limoscene admits generally its knowledge of the terms and conditions imposed by 26 *S.C. Code Regs.* 103-133(4)(a) and (4)(b) and admits that Exhibit A is a copy of its Certificate of Public Convenience and Necessity.

6. Answering Paragraph 5 of the Petition, Respondent Limoscene admits that the term “limousine” is defined by 26 *S.C. Code Regs.* 103-102(22) to mean “a passenger carrier utilizing luxury vehicles and/or vans equipped to carry up to fifteen (15) passengers [and] includes sport utility and town cars.”

7. Answering Paragraph 6 of the Petition, Respondent Limoscene admits that the term “Charter Bus” is defined by 26 *S.C. Code Regs.* 103-102(20) to mean “a motor vehicle carrying 16 or more passengers. However, a limousine shall not be considered to be a charter bus.”

8. Answering Paragraphs 7, 8, 9, 10, 11, 12 and 13 of the Petition, Respondent Limoscene admits that ORS, on multiple occasions, has asserted that two of Respondent’s limousines, an H2 Hummer and a Cadillac Escalade, are “charter buses,” not limousines, requiring Class C Charter Bus certification. In making this assessment, ORS, on information and belief, has applied standards which are erroneous, unlawful, inaccurate and/or not in compliance with controlling South Carolina law and regulations. Respondent Limoscene maintains that the questioned vehicles are “limousines” and do not exceed the authority provided under his certificate, Exhibit A to the Petition. Any allegations of the paragraphs not admitted and/or which are inconsistent with the foregoing admission are denied.

9. Paragraph 14 of the Petition is admitted to the extent it alleges Exhibit C is a letter sent to Respondent but Respondent does not admit, and strenuously denies, the matters and statements asserted in Exhibit C.

10. Paragraph 15 of the Petition is admitted but Respondent adds, on information and belief, that it is not required to file a Class C Charter Buss certificate application with the PSC.

11. Paragraph 16 of the Petition is denied.

12. Answering Paragraph 18 of the Petition (no Paragraph numbered 17 is contained in the Petition), Respondent Limoscene avers that said allegation does not state facts and should require no response by Respondent. However, to the extent any response is required, Respondent admits the provisions of *S.C. Code Ann.* §58-23-320.

### **FOR A SECOND RESPONSE**

13. Respondent Limoscene alleges that the overall seat configuration and design of its vehicles do not accommodate more than 15 seating positions and are not equipped to carry more than 15 passengers as required by the PSC regulations and that the subject vehicles are “limousines” as defined in 26 *S.C. Code Regs* § 103-102(22), not “charter buses” as defined in 26 *S.C. Code Regs* § 103-102(20).

### **FOR A THIRD RESPONSE**

14. Respondent Limoscene alleges that the manufacturer of Respondent’s vehicles has identified the subject vehicles as “limousines” on the vehicle identification plates on criteria established by federal classifications so that, in the absence of a controlling or otherwise unduly vague standard, the vehicles must be treated as “limousines”.

### **FOR A FOURTH RESPONSE**

15. Respondent Limoscene alleges that the rules and regulations of the PSC are unduly vague and overbroad, capable of varying interpretations and without specific guidance to certificate holders so that any assertions that Respondent has violated any law or regulation of the PSC is void and invalid for vagueness and overbreadth.

### **FOR A FIFTH RESPONSE**

15. Respondent Limoscene alleges that 26 *S.C. Code Regs* 103-101(2) empowers the PSC to make individual exceptions to rules “as may be considered just and reasonable as ordered by the Commission in individual cases when strict compliance with any rule or rules produces unusual difficulty and is not in the public interest.”

16. Respondent Limoscene is informed and believes that it is entitled to a ruling that the subject vehicles questioned by ORS are “limousines,” not “charter buses,” but in the event the PSC determines otherwise, Respondent maintains that waiver or exception of the rule in this individual case is warranted under 26 *S.C. Code Regs* 103-101(2) and should be granted, under whatever conditions the PSC deems just and appropriate.

17. Alternatively, Respondent Limoscene is informed and believes that, in the event the PSC renders a decision adverse to it, Respondent should be provided an opportunity to comply with any certification requirements the PSC determines may be applicable.

WHEREFORE, having fully responded to the Petition herein, Respondent Limoscene respectfully prays that the Commission:

1. Issue its order determining that the subject vehicles are “Limousines,” not “Charter Buses,” and may be authorized under Respondent’s current certification; and/or
2. Issue its order finding the controlling definitions to be vague, overbroad and void or to require any application of such resulting definitions prospectively only so as to require dismissal of the Petition and/or granting of Respondent’s application for waiver or exception; and/or

3. Issue its order permitting Respondent, in the event of an adverse determination, to make application for the type of certification the PSC concludes is appropriate for the subject vehicles; and/or
4. Such other and further relief as the PSC deems just and proper.

TURNER, PADGET, GRAHAM & LANEY, P.A.

By: Thomas C. Salane  
Thomas C. Salane  
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ATTORNEYS FOR RESPONDENT  
DANIEL SAPORITA d/b/a LIMOSCENE

Columbia, S.C.  
October 9, 2008

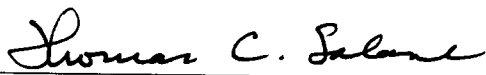
**CERTIFICATE OF SERVICE**

This is certify that I, Thomas C. Salane, have this ~~21<sup>st</sup>~~ day of October, 2008, served the original of the within Response to Petition for filing with the Public Service Commission of South Carolina by causing the original to be deposited in the United States Mail, first class postage prepaid and affixed thereto, and addressed as follows:

Public Service Commission of South Carolina  
Attn: Docketing Department  
Post Office Drawer 11649  
Columbia, S.C. 29201

Further, this is to certify that I have also served a copy of the within Response to Petition upon the Office of Regulatory Staff by causing a copy to be deposited in the United States Mail, first class postage prepaid and affixed thereto, and addressed as follows:

Office of Regulatory Staff  
Attn: Jeffrey M. Nelson and/or Shealy Boland Reibold  
1401 Main Street, Suite 900  
Columbia, S.C. 29201

  
\_\_\_\_\_  
Thomas C. Salane, Of Counsel for Respondent

October 21, 2008